



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-1394]

Richard M. Simon: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debaring Richard M. Simon from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Richard M. Simon was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Mr. Simon was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why he should not be debarred. As of August 6, 2020 (30 days after receipt of the notice), Mr. Simon had not responded. Mr. Simon's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit applications for special termination of debarment to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, (ELEM-4029) Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, [debarments@fda.hhs.gov](mailto:debarments@fda.hhs.gov), or at 240-402-8743.

## SUPPLEMENTARY INFORMATION:

### I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On January 21, 2020, Mr. Simon was convicted as defined in section 306(l)(1) of the FD&C Act when judgment was entered against him in the U.S. District Court for the District of Massachusetts, after a jury verdict, on one count of Racketeering Conspiracy in violation of 18 U.S.C. 1962(d). The pattern of racketeering activity he was convicted of included engaging in multiple acts of mail fraud (18 U.S.C. 1341) and wire fraud (18 U.S.C. 1343).

The factual basis for this conviction is as follows: Mr. Simon held executive management positions, including Regional Sales Manager for the Southeast Region and Vice President of Sales, of Insys Therapeutics Inc. (Insys), a Delaware Corporation, with headquarters in Chandler, Arizona. Insys developed and owned a drug called SUBSYS, a liquid formulation of fentanyl to be applied under the tongue. FDA approved SUBSYS for the management of breakthrough pain in adult cancer patients who are already receiving and are already tolerant to opioid therapy for their underlying persistent cancer pain. From early 2012 and continuing through 2015, Mr. Simon participated in a conspiracy whereby employees of Insys bribed medical practitioners in various states to get those practitioners to increase prescribing SUBSYS to their patients, many of whom did not have cancer. Mr. Simon, along with his co-conspirators, measured the effect of these bribes on each practitioner's prescribing habits and on the revenue that each bribed practitioner generated for Insys. Mr. Simon, along with his co-conspirators, reduced or eliminated bribes paid to those practitioners who failed to meet the minimum prescription requirements or failed to generate enough revenue to justify additional bribes.

As a result of this conviction, FDA sent Mr. Simon by certified mail on August 3, 2020, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Mr. Simon was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Mr. Simon an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Mr. Simon received the proposal on August 7, 2020. He did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Simon has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Mr. Simon, is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see DATES) (see section 306(a)(2)(B) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Simon, in any capacity, during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Simon provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Mr. Simon during his period of debarment,

other than in connection with an audit under section 306(c)(1)(B) of the FD&C Act. Note that, for purposes of section 306 of the FD&C Act, a “drug product” is defined as a drug subject to regulation under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Any application by Mr. Simon for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA-2020-N-1394 and sent to the Dockets Management Staff (see ADDRESSES). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at <https://www.regulations.gov> or at the Dockets Management Staff (see ADDRESSES) between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

Dated: November 16, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020-25601 Filed: 11/18/2020 8:45 am; Publication Date: 11/19/2020]